



Theory and practice of regulation in small economies: the Fijian experience

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Small island countries are attempting to deregulate their economies in order to provide flexibility to firms operating in an ever changing and challenging global market. During this process, regulators and policymakers have found themselves under immense pressure from the private sector over the nature and degree of regulation of commercial activities. Some argue that an economy left to the market will reduce the burden on the State, improve efficiency and growth, and thus contribute to the country's developmental objectives. There are others, however, who argue otherwise. They believe that competition law and policy can play important roles in the advancement of developing countries. We argue that competition policy and law are essential. What might vary between countries, however, is the mix between ex ante and ex post regulation. While regulatory frameworks are being developed in small countries, the State or the regulatory institution might have difficulty in undertaking ex post regulation for several reasons. This article demonstrates how unfair trading practices and anti-competitive behaviour were curbed in Fiji's telecommunications sector.

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Small island countries are attempting to deregulate their economies in order to provide flexibility to their firms, which are operating in an ever changing and challenging global market. For foreign and domestic firms, the reduction of barriers to trade and the removal of barriers to entry are important spurs to competition. Economic theorists have long predicted that great benefits flow from the competitive process. In order to maintain their position in the market, firms must constantly improve, bringing in new equipment and products

and improved production processes, seeking out cheaper suppliers and new customers, and improving management techniques and workers' skills. New firms come into the market and prosper if they perform well; less efficient firms become unprofitable and are forced out. These effects have been amply verified by empirical studies of the determinants of industrial growth (Baldwin 2003; Easterly 2001; Khemani 2007).

Regulatory intervention is possible only because the State has a very important and basic resource that no other agent has:



the power to coerce. The State may seize money by taxation. The State may ordain the physical movement of resources and modify the economic decisions of households and firms without their consent. But these powers of the State can also be utilised by an industry to make private gains. There are four key ways in which this is possible.

1. The individual firm, industry or industry group might seek direct subsidies from the State.
2. The individual firm, industry or industry group might seek control over the entry of new rivals.
3. The individual firm, industry or industry group might seek specific policies to deal with substitutes and complementary products.
4. The individual firm, industry or industry group might seek intervention relating to price fixing and control.

It is quite common in small economies for firms to use their wealth and market power to secure political influence, which they use to gain protection from the inconveniences of competitive pressures, undermining the dynamism of the economy and the welfare of the country (Khemani 2007). Competition policy and law play important roles in directing an economy onto the right path. When they work well, competition policy and law help to foster an effective competitive process. Countries that have a record of effective competition law enforcement have experienced higher growth (Dutz and Hayri 2001). Without pressure from competition, firms do not have a yardstick by which to measure their performance and thus are less likely to change their business practices for the better.

The objective of competition policy is to ensure that competition in the market-place is not restricted in a way that is detrimental

to the society (Connor and Bolotova 2006; Gal 2001). It comprises the set of measures and instruments used by governments to determine the 'condition of competition' in their markets (Motta 2004). Competition law is also a set of rules, disciplines and regulations to discipline market behaviour, particularly agreements and practices that restrict competition—including attempts to create dominant positions through mergers (Bernstein 1955; Schatan and Riviera 2008).

By cracking down on exploitative or abusive market behaviour, competition law enforcement contributes to what can be termed 'economic democracy' (Johaniso 2010). This term has two facets. First, it refers to the empowerment of consumers and the enhancement of their welfare, as improving consumer choice and lowering consumer prices increase their economic power. Second, the term refers to the benefits to firms. Not only do the prospects of firms that were hurt by anti-competitive activities improve with competition law enforcement, the firms that carry out such practices also stand to gain as the new competitive pressures drive them to perform better (Johaniso 2010). As a result, they might be able to enter new markets, at home or abroad. And as market entry barriers come down, entrepreneurship becomes more rewarding.

In this article a theoretical basis for regulation is provided. The theoretical framework is that of the principal-agent, in which the principal is the State or the regulatory institution and the agent is the regulated firm. The principal attempts to maximise social welfare under incentive constraints that result from the informational advantage of the agent and its strategic behaviour. This article also examines a case of substantial market power in Fiji, as well as cases of unfair trading practices and anti-competitive behaviour, some of which could



arise due primarily to particular features of small economies.

Fiji is little different from other small countries. The country faces structural problems in relation to competition. Its economy is quite open and vulnerable, specialised in only a few production lines, and highly dependent on imports. In such a case, unregulated markets can pose serious problems.

This article first provides a theoretical overview of regulation and then examines the various regulatory options and tools. It then describes how substantial market power and cases of unfair and restrictive trading practices in Fiji's telecommunications sector were examined by the Commerce Commission over the past two years, before offering concluding remarks.

Theoretical overview of regulatory intervention

There are four schools of thought in the field of regulatory economics. These are

1. the economic-libertarian school
2. the normative-positive school
3. the Marxist school
4. the pragmatic-administrative school.

The four schools of thought can be summarised by examining their perception of markets and government (Figure 1).

The economic-libertarian school of thought

This school sees markets and economic growth as the best mechanisms for maximising social and economic welfare. It argues that regulation is unnecessary, that it does not protect the public at large but only the interests of powerful groups and lobbyists (Posner 1974). It is argued that individuals and businesses form associations or chambers since collectively they can be more successful in collecting economic rents and appropriating increasing amounts of surplus. In small economies, this kind of behaviour is quite prevalent. Such groups try to influence politicians to pass favourable laws and regulations or policies. This behaviour is more prevalent during the period close to the preparation of the national budget. Stigler (1971:3) argues that 'regulation is acquired by the industry and is designed and operated primarily for its benefit'. He theorises that all firms seek to maximise profits, and profits can be increased if competition is reduced or governmental subsidies are obtained. Those belonging to this school are strong advocates of the maximisation of freedom of thought and action.

The radical/Marxist, anti-capitalist school of thought

This school sees regulation as an attempt to prop up the State and state mechanisms by covering for the failures of the capitalists'

Figure 1 Regulatory schools of thought

	Government as saviour	Government failure
Market as saviour	Pragmatic-administrative school of thought	Economic-libertarian school of thought
Market failure	Normative school of thought	Marxist school of thought

Source: <http://poli.haifa.ac.il/~levi/regutheories.htm>



mode of production. Its adherents argue that surplus creation is the key objective of the capitalists' mode of production. More of the surplus could be returned to the owners of factors of production if, however, capitalists owned fewer of the factors of production. Therefore, it is in the interest of the capitalists to capture the state apparatus and regulatory instruments not only to ensure that the capitalists' mode of production survives but also to keep ordinary people from owning the key factors of production.

The normative-positive school of thought

The normative theory of market failure predicts that regulation will be instituted to improve economic efficiency and protect social values by correcting market imperfections. In general, the conclusions of this body of theory are that regulation occurs because

1. the government is interested in overcoming information asymmetries with the operator and in aligning the operator's interest with the government's interest;
2. customers desire protection from market power when competition is non-existent or ineffective;
3. operators desire protection from rivals; or
4. operators desire protection from government opportunism.

Six types of market failure are explored: natural monopoly, externalities, public goods, asymmetric information, moral hazard, and transaction costs. The proponents of this school argue that regulators or competition authorities should, wherever possible, encourage the existence of full information, provision of incentives to improve performance, and establishment of price signals that would improve performance.

Pragmatic-administrative school of thought

This school sees markets and governments complementing each other (Gurtoo 2008). Bernstein (1955:73) argues that although there are 'unique elements' in the experience of each country, 'the history of regulatory interventions reveals a general pattern of evolution more or less characteristic of all' with 'roughly similar periods of growth, maturity, and decline'. The length of periods can vary across regulatory institutions, and periods can sometimes be skipped, but there is yet a 'rhythm of regulation' that suggests a 'natural life style' (Bernstein 1955:74). The role of regulators is to encourage competition, remove information asymmetries, and protect consumers and business from unfair trading practices. While these measures will initially be seen as impediments to the growth and development of firms, in the longer run they will provide a level playing field for consumers and business, thus increasing the volume of activity.

In summary, with regard to regulatory practice, there exist key actors who attempt to maximise their key objectives. There are business groups whose objective is to maximise profits. Firms with high stakes in the outcome of policy or regulatory decisions can be expected to focus their resources on attempting to gain the outcomes they prefer. The members of the public, each with only a tiny individual stake in the outcomes, will ignore them altogether (Huntington 1952; Laffont and Tirole 1991; Levine and Forrence 1990; Stigler 1971). Next, there are politicians who create regulations that give them control and thus rent-creation options. The behaviour of both of these groups conforms to private interest theory, which argues that by limiting competition or by imposing higher costs on consumers, deadweight losses are created. Peltzman



(1976:13) summarised the most important characteristics of regulation that have emerged from the literature.

1. Compact, well-organised groups tend to benefit more from regulation than broad, diffuse groups. This creates a bias in favour of producer groups because they are usually better organised than consumer groups. The dominant coalition, however, usually includes subsets of consumers.
2. Regulatory policy will seek to preserve a politically optimal distribution of rents across the rent-seeking coalition.
3. Because the political payoff to regulation arises from income distribution, the regulatory process is sensitive to deadweight losses. Policies that reduce the total income available for distribution will be avoided because, other things being equal, they reduce the political payoff from regulation.

The above theories of regulation provide slightly varying explanations about who will receive the benefits and burdens of regulation and its effects on resource allocation and welfare changes in society.

Regulatory options and tools

Regulation options can be classified under two broad categories: *ex ante* regulation and *ex post* regulation. Regulatory authorities rely on a mix of these two broad approaches to regulation.

Ex ante regulation uses government rules and regulations to prevent the private sector from delivering socially undesirable actions or outcomes. It examines the structure and size of markets in terms of the number of firms, entry conditions and degree of product differentiation (Turvey,

Hoy and Islam 2001). This set of regulation is forward looking in the sense that it sets out a framework of firm behaviour in advance. In this way, it attempts to minimise deadweight losses arising out of anti-competitive behaviour or unfair trading practices. In doing so, this approach provides certainty and confidence for all stakeholders in the industry. With such a framework in place, transaction costs involved in mediation, arbitration and litigation are avoided to a large extent. This approach, however, also has some pitfalls. While it can prevent an over-enthusiastic firm from engaging in risky ventures, it can also discourage firms from engaging in potentially beneficial behaviour. The framework for this behaviour is benchmarked to a competitive market structure, whereas small economies often face an imperfect market structure. In small economies, there is also the danger that regulated industries could capture the regulatory process not only within the regulatory body but also within the government's decision-making process.

Ex post regulation examines allegations of restrictive trade practices. It uses various enforcement options such as fines, injunctions or bans to penalise those violating the regulations (Turvey, Hoy and Islam 2001). Countries have elaborate competition laws that not only provide a framework for firm conduct but also set out the penalties to deal with violators of the regulations. The main advantage of this approach is that firms are made aware in advance of the forms of conduct that are not acceptable and the consequences of misconduct. This approach, however, requires the regulator to prove beyond doubt that the firm has behaved in a manner that is anti-competitive, is not a fair trading practice or lessens competition. The burden of proof is on the regulator. Furthermore, firms can use the judicial system to drag the case on for a long period during which



further damage is done. Multinationals can have a 'field day' in resource-stretched economies as such companies are well endowed and have a track record in dealing with these kinds of cases.

Examination of substantial market power

Examination of the substantial market power (SMP) of firms is an essential job of regulators. The existence of SMP is assessed according to widely acknowledged criteria. Market power is considered to be the ability to set prices unilaterally. An SMP-designated operator often has a level of market power that allows it to act independently of competitors, suppliers and, ultimately, consumers. The analysis of effective competition begins with the calculation of market shares, in order to identify the firms with SMP. The existence of SMP cannot, however, be determined exclusively on the basis of market share. The analysis must be carried out on the basis of a thorough analysis of the economic characteristics of the relevant market. Therefore, we must also examine the nature of the barriers to entry to the relevant market and the existence of countervailing buying power.

Approaches to price control

If a firm is proven to have SMP, the regulator can control prices. The regulator can make a submission to the relevant minister for enactment of a price control order (PCO). Once the PCO is in place, the regulator will have the power to approve prices. There are three primary approaches to regulating price levels

1. rate-of-return regulation
2. price-cap regulation
3. benchmarking approach.

The rate-of-return approach adjusts price levels according to the operator's

accounting costs and cost of capital, thus restricting the amount of profit that the regulated firm can earn. The procedure consists of four steps

1. establish an appropriate asset base
2. establish an appropriate system for calculating allowable costs
3. establish an appropriate rate of return for the asset base
4. establish a set of prices such that the earnings defined as the difference between the revenue that these prices would yield and the associated allowable costs do not exceed the allowed rate of return.

In most cases, the regulator reviews the operator's price level in response to a claim by the operator that the rate of return that it is receiving is less than its cost of capital—or in response to the suspicion of the regulator or a claim by a consumer group that the actual rate of return is greater than the cost of capital. Globally, the weighted average cost of capital (WACC) is estimated rather than the return on capital. The WACC covers both debt finance and equity finance. This approach is of some concern given that a higher rate of return could be allowed than what the firm actually needs, and the firm could engage in unnecessary investments to demonstrate a higher return to shareholders. This effect is commonly known as the Averch-Johnson effect (Averch and Johnson 1962). On the other hand, this approach protects the firms from the regulator arbitrarily setting prices without any concern for the firm's financial status.

Under price-cap regulation, which is more commonly known as retail price index (RPI-X) regulation, after the Littlechild (1983) report, the regulator sets the price by first determining the cost of delivering the service. The regulator can undertake cost modelling in which the unit cost is estimated and the price is set allowing for



an appropriate mark-up. The firm can then sell its products and services at any price below or equal to the price cap set by the regulator. To curb possible price wars and anti-competitive behaviour, the regulator can also set a price floor; however, this is rare. Firms might argue that they have made massive investments and thus need price protection for some period before the price is lowered. In such cases, the regulator can adopt a price 'glide path' leading to the desired price. The price-cap approach is seen as a superior approach *vis-à-vis* the rate-of-return approach, given that the firm subject to rate-of-return regulation has an incentive to produce using an inefficient technology mix, overstate its costs and under invest in cost-reducing innovations.

In benchmarking regulation, the operator's performance is compared with that of others and penalties or awards are assessed based on the operator's relative performance. The Fiji Commerce Commission recently took a benchmarking approach to the setting of interconnection rates for local network operators in the telecommunications industry. In selecting benchmarking data, the commission took a number of factors into account including prices of services substantially similar to those services being assessed. These were taken from jurisdictions in which a reasonable level of competition exists. It also took into account adjustments to reflect, among other things, the relative economic and social development, demographic and geographic factors, the extent of urbanisation, scale economies, the state of development of the telecommunications sector in Fiji, and differences in direct and indirect costs, including subscriber acquisition costs of providing telecommunications services in Fiji. This approach should not be utilised alone as there will be differences in the operations of the industry located in different jurisdictions. Henceforth, a

combination with other approaches is advisable.

Cases of substantial market power and restrictive trade practices in Fiji's telecommunications sector

Competition policy and law in Fiji, as in all other countries, aim to promote effective competition and informed markets, encourage fair trading, protect consumers and businesses from restrictive practices, and control prices of regulated industries and other markets where competition is lessened or limited. There are various types of restrictive trade practices and anti-competitive behaviour that can be observed. These include

- collusion: processes of collective decision making in areas such as price and quantity setting and market sharing, which can result in lessening of competition and gaining of unfair advantage
- price discrimination: setting different prices for different buyers
- abuse of market power: where firms holding a dominant position unilaterally change prices and output to the disadvantage of consumers
- lessening of competition: any activities that result in a change in market structure towards a monopoly situation
- collective tendering: making a collective bid and thus bypassing the core aspect of the bidding process
- pyramid selling schemes: where revenue streams are guaranteed by creating additional members
- adulteration: product quality is manipulated and sold
- hoarding: stock is withheld to raise the price



- black marketeering: selling goods illegally
- limited offers: limited offers and failing to supply as demanded
- exclusive dealing: dealings with preferred suppliers only, thus foreclosing the market
- mergers: takeover of firms leading to a dominant position in the market
- bait pricing and bundling: where firms sell a product at a very low price to lure the customer to the shop. The firm might also bundle the offer, thus compelling the customer to buy other related products.

In the following section, we examine two of the above cases in relation to Fiji's telecommunications sector and describe how the Commerce Commission dealt with them.

Fiji's telecommunications sector: a brief background

The telecommunications sector in Fiji has been undergoing major reforms over the past three years. Before 17 January 2007, Fiji had one mobile operator, Vodafone (Fiji) Limited (Vodafone), one landline operator, Telecom Fiji Limited (TFL), and the international gateway, Fiji International Telecommunications Limited (Fintel). Vodafone is a joint venture between Amalgamated Telecoms Holding Limited (ATH) (51 per cent) and Vodafone International Holdings BV (49 per cent). TFL is a 100 per cent-owned subsidiary of ATH. ATH has rights to manage the government's 51 per cent shareholding in Fintel, which is a joint venture between the government (51 per cent) and Cable & Wireless (49 per cent).

On 17 January 2007, the government concluded a deed of settlement with ATH and its related companies, Vodafone,

TFL and Fintel, which liberalised the telecommunications sector in Fiji.

The deed of settlement enabled the government to license Digicel (Fiji) Limited (Digicel) to operate public cellular mobile telecommunications systems and associated networks and to provide public cellular mobile telecommunications services in Fiji. Digicel began providing mobile telecommunications services from 1 October 2008, thereby effectively ending Vodafone's 14-year monopoly over its mobile telecommunication network in Fiji. Prior to Digicel's entry, Vodafone launched Inkk Mobile Limited (Inkk) on its network. While both Vodafone and Digicel have deployed a national mobile network, Inkk does not have its own mobile telecommunications network. Vodafone and Digicel operate mobile telecommunications networks based on the Global System for Mobile Communications (GSM) standard.

Digicel and Vodafone provide the full range of retail mobile telecommunications services, including offering users the ability to send and receive voice calls, text messages and data. Both operators subsidise to varying degrees mobile handsets, thereby promoting the affordability of handsets and increasing mobile penetration rates. The charging system for the exchange of voice calls is the calling-party-pays (CPP) system. Under the CPP system, the calling party pays entirely for the call, and the wholesale termination rate paid by the originating operator is normally passed on to its end customer. Digicel has achieved a market share of approximately 25 per cent.

Examination of substantial market power in the telecommunications sector. In March 2009, the Commerce Commission noted that telecommunication charges in the retail sector were exorbitantly high. One of the reasons was the high interconnection rates, also known as wholesale rates. Interconnection is a critical feature of



telecommunications networks, as it enables subscribers on one network to call and to be called by subscribers on another network. In the absence of interconnection, a small network operator is unlikely to be attractive to potential customers as it would be unable to communicate with a significant proportion of subscribers to other networks. In the following section, we describe the Commerce Commission's examination of SMP for the mobile market only.

The examination of SMP requires

- definition of the relevant markets: the product/service and geographic markets
- examination of demand and supply substitutability
- examination of countervailing power.

Definition of the relevant market. In accordance with international regulatory best practice, the relevant market is defined through the interaction of two dimensions—the product/service market and the geographic market. The definition of the relevant product or service market begins with the grouping of products or services used by consumers based on their final purpose/use. These grouped products and services are considered to fall within the relevant market if the behaviour of the suppliers of the services is subject to the same type of competitive pressure—in relation to price setting.

The relevant geographic market includes the area in which the undertakings are involved in the supply and demand of the relevant products or services; in which area the conditions of competition are similar or sufficiently homogeneous; and which can be distinguished from neighbouring geographic areas. In the telecommunications sector, the geographic scope of the relevant market has traditionally been determined by reference to two main criteria

1. the area covered by a network
2. the existence of legal and other regulatory instruments.

Given that the relevant market is that for voice-call termination on individual mobile networks, the geographic scope of each relevant product market should correspond with the geographic coverage of each termination network. Vodafone and Digicel are licensed to deploy nationwide mobile telecommunications networks in Fiji with no regional restrictions. Both operators have exploited such licensing rights, with each deploying nation-wide mobile telecommunications networks. In addition, Vodafone and Digicel practise rate uniformity throughout the national territory. In this regard, the geographic dimension of the voice-call termination markets in mobile networks corresponds with the geographic reach of each mobile network under consideration.

Demand and supply-side substitutability. There are two main types of competitive constraints that can be identified: 1) demand-side substitutability; and 2) supply-side substitutability. In the industrial economics literature, the so-called 'hypothetical monopolist test' (also known as the 'SSNIP test': small but significant non-transitory increase in price) is used when evaluating the existence of substitutability from both the supply and the demand sides.

Demand-side substitutability: as regards demand-side substitutability, a network operator wishing to terminate a call to a mobile subscriber cannot terminate it on an alternative network. To do so would currently result in the completion of the call being unsuccessful. In essence, the need to direct traffic to a specific mobile network ensures that there is no realistic demand-side substitute service available to an operator seeking to terminate a voice call on a particular mobile network.



Supply-side substitutability: from the supply-side perspective, another mobile network operator cannot terminate traffic as long as it does not have access to the user profile of the called mobile network, in particular those available on the SIM card. SIM cards would need to be re-programmable in order to have supply-side substitutability between mobile voice-call termination networks, but the technology is not currently available. This situation makes it impossible for an operator on whose network a given voice call originates to have the call terminated by an operator other than the one chosen by the called party.

A strict analysis of demand and supply-side substitutability suggests that mobile voice-call termination services on individual mobile networks might be the relevant market for *ex ante* regulatory purposes. The Commerce Commission, however, also examined whether such a strict analysis accurately reflected the competitive dynamics of mobile voice-call termination services. Specifically, the commission evaluated the extent to which the pricing of mobile voice-call termination services was constrained by the choices of retail customers.

Countervailing power. Countervailing buying power can mitigate the ability of even a monopolist to control pricing. Countervailing buyer power is defined as the ability of larger customers within a reasonable timeframe to resort to credible alternatives if the supplier decides to increase prices or to affect the conditions of delivery adversely. Factoring in the various types of relationships between the relevant parties, the Commerce Commission broke down the analysis of countervailing buying power into three parts. First, countervailing power from the viewpoint of retail customers was analysed. Second, the countervailing powers of fixed-network operators—in particular TFL—were analysed. Third, the

operations of other mobile networks were analysed.

Countervailing power of retail clients: generally speaking, there are no buyers of retail mobile services with enough countervailing buyer power to influence mobile network operators when setting their voice-call termination prices. This situation is due mainly to the use of the invoicing system based on the CPP principle.

In Fiji, the current pricing system for voice calls on mobile networks, regardless of whether the call originates from a mobile network or a fixed-line network, translates into the application of the CPP principle. According to this payment method, the calling party is responsible for the entire payment for the call. In turn, the operator of the network on which the call is terminated, which is chosen by the called party, defines the termination rates associated with voice calls on the mobile networks. In this system, there is a separation between who pays for the call and who chooses the network on which it is terminated (that is, the network responsible for establishing the termination price). Consequently, the overall effect of the CPP principle in the retail market-place is that, whereas mobile networks have an incentive to keep prices of services at a level sufficient to attract and retain customers, they have less incentive to keep the price of calls to mobiles low. This is because callers cannot take their business elsewhere if dissatisfied, as the caller has to use that network to reach that particular number.

Countervailing power of TFL: the fixed-network operator, TFL—the leading wholesale buyer of the termination service of calls originating on the fixed network—is responsible for a limited volume of voice traffic terminated on mobile networks. Consequently, if TFL had countervailing buying power and decided not to acquire the voice-call termination service offered by a particular mobile network operator,



it would in theory be able to restrict the freedom of a mobile network operator to set the price in question that resulted from its monopoly of the relevant product market. TFL has, however, a limited customer base.

Countervailing power of mobile network operators: it can also be considered that the monopolistic position of each mobile network operator in the termination market is not sufficient of itself to determine whether each individual operator holds a dominant position. Notwithstanding the 100 per cent market shares in the relevant markets, the operators' capacity to act independently from their competitors and consumers, and particularly their capacity to fix the conditions of provision of their termination services, must also be evaluated. In this context, mobile operators might be prevented from acting independently of their competitor by virtue of any countervailing power arising from their mobile competitors.

A review of past negotiations in relation to the relevant market, where Digicel and Vodafone have set reciprocal prices and where any evolution of such pricing could not be imposed by any one party on the other, suggests that it is not clear that Vodafone has sufficient countervailing power as a buyer of voice-call termination on the Digicel network to rule out the capacity of Digicel to act largely independently of its competitors and consumers in the relevant market. Digicel did not present convincing arguments demonstrating that it had sought unilaterally to reduce termination prices on its network and that its competitors had not prevented such action.

Similarly, although Digicel is a significant buyer of termination services on the Vodafone network, Digicel does not have sufficient countervailing buying power on the Vodafone network to rule out the capacity of Vodafone to act largely independently of its competitors and consumers in the relevant market.

In conclusion, it is unclear whether any buyer of voice-call termination services on individual mobile networks has sufficient countervailing buying power to offset the monopolist position of mobile network operators, and so prevent mobile network operators from acting independently of competitors and consumers, particularly by charging prices for these services above the competitive level. The fact that regulatory restrictions covering voice-call termination services on mobile networks have always been in operation reinforces this conclusion.

Therefore, taking all the factors presented into account, it is concluded that the mobile companies that operate in the mobile voice-call termination markets hold SMP in relation to those networks and that such SMP will in all likelihood be maintained in the short to medium term.

Restrictive trade practices by a mobile operator

Restrictive trade practices are quite common in the telecommunications industry throughout the Asia Pacific region and Fiji is no exception. An edited volume of papers on reforms in the telecommunications sector in the Asia Pacific by Brown, Hossain and Nguyen (2004) provides an in-depth insight into the industry. With the opening up of Fiji's telecommunications sector in late 2008, competition in the industry pushed the operators to engage in strategies to acquire market share quickly. In September 2009, the Commerce Commission received complaints that a particular telecommunications operator was engaged in restrictive trade practices. The allegation was on three fronts



1. market foreclosure: entering into long-term contracts with corporate customers prior to entry of the competitor, thus effectively foreclosing the market
2. exclusive contracts with traders: having exclusive contracts with traders to sell its products only
3. exclusive texting platforms on media outlets: texting could be made only from a particular operator's network.

The Commerce Commission wrote to the network operator stating that it might have engaged in unfair and undesirable trade practices during the period leading up to the launch of the new mobile operator. The commission noted that it had further reason to believe that such practices could be continuing and that they might have included the operator misusing its former monopolistic position and/or engaging in anti-competitive conduct and restrictive trade practices.

The operator was requested to provide the commission with copies of all contracts it had with corporate clients, media outlets and suppliers of its product. Having complied with the commission's requests, the operator agreed to revoke all contracts and open up the foreclosed segment of the market.

Concluding remarks

In this article, we examine the theoretical basis of regulation and its practice in a small economy such as Fiji. We note that while a competitive market is the desired outcome, in small economies the inherent structural features of the economy will require regulation in sectors where competition is absent or could be lessened by incumbents. In such economies, competition law might have to address more objectives than elsewhere. When developing such laws, policymakers have to ensure that while consumers are treated fairly, the law

does not become an impediment to the productivity and efficiency of the private sector. Any such negative implications can have serious developmental implications such as on investment and employment promotion.

The need to tailor competition law to economies at different stages of development is important for growth and development. Furthermore, the stage of development of a country and its market also dictate the mix of *ex ante* and *ex post* regulation. While competition laws provide the framework for *ex ante* behaviour, *ex post* regulation is inevitable in small economies. Hence, state and competition authorities must be well resourced to ensure that *ex post* regulation eliminates unfair trading practices and anti-competitive behaviour in the longer run.

The work of a regulator can be made easier if the State and state institutions work closely with the regulatory authority. There are a number of ways in which this can be facilitated. First, state institutions must be forthcoming with key information such as audited financials held by the tax authority. Government should closely examine policy changes that might have an impact on the determinations of regulatory bodies. For example, import tariff changes and devaluation are some of the actions that clearly impact on a regulatory authority's work. Injunctions and court orders are also very important tools for the work of the regulatory body, and thus the judiciary must be well versed with the Commerce Commission's work and objectives. Finally, the attorney-general's office plays a very important role in approval of price control orders, and thus efficiency in its examination of the submissions and approval is critical to the Commerce Commission's work. In summary, all stakeholders must fully understand and appreciate the work of the Commerce Commission and thus be ready to assist.



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